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EXAMINER

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/045,149
Filing Date: January 15, 2002
Appellant(s): CIRCENIS ET AL.

Sean Wooden
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 08, 2006 appealing from the
Office action mailed June 02, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0083003

Halliday et al

6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 33-46, 48-65 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pub No. 2002/0083003 to Halliday et al.

Referring to claim 33:

A software pay-per-use (PPU) system comprising:

A first computer having one or more PPU software products; [0053]

A metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products; [0056]

A software metering agent residing on the first computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer; [0056]

A utility metering appliance connected to a plurality of computers, including the first computer, through a network, wherein the utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents residing on other computers connected to the utility metering appliance through the network; and [0051]

A usage collection and billing system, wherein the suage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network. [0058]

Referring to claim 34:

The system of claim 33, further comprising:

A registry for identifying all of the one or more PPU software products registered with the software metering agent on the first computer, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. [0056], [0068]

Referring to claim 35:

The system of claim 33, wherein the software metering agent reads the pathname in the registry to access the associated metric gathering tool and collect the measured usage data [0062]

Referring to claim 36:

The system of claim 33, wherein the software metering agent collects measured usage data from a plurality of metrics gathering tools. [0068], [0069]

Referring to claim 37:

The system of claim 33, wherein the utility metering appliance is located on a standalone computer on the network. [0051], [0053]

Referring to claim 38:

The system of claim 37, wherein the utility metering appliance is a software program residing on each of the plurality of computers. [0051], [0052]

Referring to claim 39:

The system of claim 33, wherein the metrics gathering tool is an executable script incorporated within the associated PPU software product. [0056]

Referring to claim 40:

The system of claim 3, wherein the software metering agent is periodically polled by the utility metering appliance. [0056]

Referring to claim 41:

The system of claim 33, wherein the usage collecting and billing system further comprises:

A billing computer, wherein the billing computer receives the collected usage data from the utility metering appliance and provides a bill to customers of the system based on generated billing information. [0058]

Referring to claim 42:

The system of claim 41, wherein the usage collecting and billing system provides a web portal, accessible by customers, that displays the billing information. [0064]

Referring to claim 43:

The system of claim 41, wherein the usage collecting and billing system provides a web portal, accessible by customers, that displays the collected usage data. [0064], [0066]

Referring to claim 44:

The system of claim 33, wherein the usage data includes cumulative usage data accumulated over a given time period or snapshot data. [0064]

Referring to claim 45:

The system of claim 33, wherein the usage data includes a number of input/output(I/O) transactions processed in a given time period. [0064]

Referring to claim 46:

The system of claim 33, wherein the usage data associated with the one or more of the PPU software products is based on one or more of the following: number of users of the system, number of users of a given type, software license level, number of transactions processed per minute, total number of transactions processed, number of files created, sizes of files created, number of keystrokes processed, number of times a specific software product feature has been accessed and number of computers on the system using one or more of the PPU software products. [0064]

Referring to claim 48:

The system of claim 33, further comprising:

A second computer, from the plurality of computers, having one or more PPU software products; (Fig 1), [0060]

A metrics gathering tool associated with each of the one or more PPU software products on the second computer, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPU software products on the second computer; and [0056]

A software metering agent residing on the second computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the second computer, and wherein the software metering agent residing on the second computer is connected to the utility metering appliance through the network and the utility metering appliance receives the collected usage data associated with the second computer from the software metering agent residing on the second computer. [0056]

Referring to claim 49:

The system of claim 48, the usage collection and billing system periodically receives the collected usage data associated with the second computer from the utility metering appliance and processes the collected usage data associated with the second computer to generate billing information for PPU software products on the second computer. [0056], [0058]

Referring to claim 50:

The system of claim 33, wherein the software metering agent collects measured usage data from a plurality of metric gathering tools in the first computer and transmits the collected usage data from the plurality of metric gathering tools to the utility metering appliance. [0071]

Referring to claim 51:

The system of claim 50, wherein the utility metering appliance receives the collected usage data from a plurality of software metering agents residing on the plurality of computers and transmits the collected usage data from the plurality of software metering agents to the usage collection and billing system. [0051]

Referring to claims 52 and 59:

A computer implemented method for generating a bill for using a pay-per-use (PPU) software product, the method comprising:

Measuring usage data associated with one or more PPU software products using a metrics gathering tool at a first computer having one or more PPU software products, wherein one metrics gathering tool is associated with each of the one or more PPU software products; [0056]

Collecting the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products using a software metering agent, wherein the software metering agent collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer.

[0056]

Receiving the collected usage data from the software metering agent residing on the first computer and from a plurality of other software metering agents residing on a plurality of computers, wherein the collected usage data is collected at a utility metering appliance connected to the plurality of computers, including the first computer, through a network; [0051]

Processing the collected usage data from each metrics gathering tool associated with each of the one or more PPU software products on the first computer received from the utility metering appliance; and [0058]

Generating the bill for using the one or more PPU software products on the first computer based on the processed collected usage data from the first computer. [0058]

Referring to claims 53 and 60:

The method of claim 52, further comprising:

Identifying all of the one or more PPU software products registered with the software metering agent on the first computer by a registry, wherein the registry includes identifiers for all of the one or more PPU software products registered with the software metering agent on the first computer and a pathname for each software metering agent associated with each of the one or more PPU software products. [0056], [0068]

Referring to claims 54 and 61:

The method of claim 53, further comprising:

Reading the pathname in the registry to access the metrics gathering tool associated with the PPU software product; and

collecting the measured usage data associated with the PPU software product.

[0062]

Referring to claims 55 and 62:

The method of claim 52, further comprising:

Collecting the measured usage data from a plurality of metrics gathering tools.

[0068], [0069]

Referring to claims 56 and 63:

The method of claim 52, further comprising:

Periodically polling the software metering agent by the utility metering appliance to retrieve the measured usage data. [0056]

Referring to claims 57 and 64:

The method of claim 52, further comprising:

Measuring usage data associated one or more PPU software products on a second computer using metrics gathering tools on the second computer, wherein a metrics gathering tool is associated with each of the one or more PPU software products; and [0060], [0056]

Collecting the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products as a software metering agent on the second computer and from all of the one or more PPU software products registered with the software metering agent on the second computer, wherein the software metering agent residing on the second computer is connected to the utility metering appliance through the network and the utility metering appliance receives the collected

usage data associated with the second computer from the software metering agent residing on the second computer. [0056]

Referring to claims 58 and 65:

The method of claim 57, further comprising:

Processing the collected usage data from each metrics gathering tool associated with each of the one or more PPU software products on the second computer received from the utility metering appliance; and [0058]

Generating the bill for using the one or more PPU software products on the second computer based on the processed collected usage data from the second computer. [0058]

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday et al.

Referring to claim 47:

Halliday discloses that the metering server is connected to a set of metering monitors via a communications link. [0051] Halliday does not expressly disclose that the communications link is one or more of a Simple Network Management Protocol, Web-

Based Enterprise Management Protocol, Desktop Management Interface and Hypertext Transfer Protocol.

However, the Simple Network Management Protocol, Web-Based Enterprise Management Protocol, Desktop Management Interface and Hypertext Transfer Protocol are all well known network communication method, therefore, it would have been obvious at the time of the invention was made that Halliday could use any type of communications link available as long as it enabled networking of plurality of computers.

(10) Response to Argument

As per claim 33, the applicant argues that Halliday does not inherently or explicitly describe:

A software metering agent residing on the first computer, wherein the software metering agent collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer. More specifically the applicant argues that Halliday does not disclose that the metering monitor "collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products." The Examiner respectfully disagrees.

Halliday teaches "*a software metering agent*" by disclosing the user will load from a data storage medium, or download from a proprietor's website to his local computer,

one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056] Halliday further discloses the function of the metering monitor by stating that the metering monitor is a computer program that receives and batches tool usage information from running tools for secure firewall-transparent communication to a metering server [0052] and in one embodiment of the invention deployed on a client computer, a metering monitor that monitors the client applications on this client computer. [0068] From the fact that the metering monitor receives and batches tool usage information from multiple running tools and monitors the client applications on the client computer, Halliday teaches "collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products."

The applicant also argues that Halliday does not describe any software product registered with the software metering agent. However, Halliday discloses that a user downloads to his local computer one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056] Since the downloaded software packages include the client application and a metering monitor then the application is registered with the metering monitor so that the monitor could monitor the application usage.

The applicant also argues that Halliday does not inherently or explicitly describe

A metrics gathering tool associated with each of the one or more PPU software products, wherein each metrics gathering tool monitors and measures usage data for its associated one or more PPUS software products. More specifically the applicant states that Halliday does not describe the metering means as being "associated with each of the one or more PPU software products." The Examiner respectfully disagrees.

Halliday discloses that a user downloads to his local computer one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056]

Therefore, from the disclosure it is clear that the metering means is associated with each of the one or more PPU software products since the specially configured software packages include the client application and a metering monitor for metering the client application.

As per claim 52, the applicant argues that Halliday does not inherently or explicitly describe:

Collecting the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products using a software metering agent, wherein the software metering agent collects usage data for all of the one or more PPU software products registered with the software metering agent on the first computer. More specifically the applicant argues that Halliday does not disclose that the metering

monitor "collects the measured usage data from each metrics gathering tool associated with the one or more PPU software products and collects usage data for all of the one or more PPU software products." The Examiner respectfully disagrees.

Halliday discloses the user will load from a data storage medium, or download from a proprietor's website to his local computer, one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056] Halliday further discloses the function of the metering monitor by stating that the metering monitor is a computer program that receives and batches tool usage information from running tools for secure firewall-transparent communication to a metering server [0052] and in one embodiment of the invention deployed on a client computer, a metering monitor that monitors the client applications on this client computer. [0068] From the fact that the metering monitor receives and batches tool usage information from running tools and monitors the client applications on the client computer, Halliday teaches "collects the measured usage data from each metrics gathering tool associated with each of the one or more PPU software products and collects usage data for all of the one or more PPU software products."

The applicant also argues that Halliday does not describe any software product registered with the software metering agent. However, Halliday discloses that a user downloads to his local computer one or more specially configured software packages. These packages may include, in addition to the client application, an application library

having metering means for developing and communicating usage information to an also included metering monitor. [0056] Since the downloaded software packages include the client application and a metering monitor then the application is registered with the metering monitor so that the monitor could monitor the application usage.

The applicant also argues that Halliday does not inherently or explicitly describe Measuring usage data associated with one or more PPU software products, using a metrics gathering tool at a first computer having one or more PPU software product, wherein one metrics gathering tool is associated with each of the one or more PPU software products. More specifically the applicant states that Halliday does not describe the metering means as being "one metrics gathering tool [] associated with each of the one or more PPU software products." The Examiner respectfully disagrees.

Halliday discloses that a user downloads to his local computer one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. [0056] Since Halliday describes a user downloading software package to the user's computer, and the software package includes the client application and a metering monitor, Halliday teaches "one metrics gathering tool associated with each of the one or more PPU software products."

As per Claim 47, the applicant argues that the Rejection of Claim 47 Under 35 U.S.C. §103(a) must Fail Because Halliday Fails to Teach or Suggest Each and Every Element of the Claims. However, from Halliday's disclosure and the response to the limitation of claim 33 presented above Halliday Does Teach or Suggest Each and Every Element of the Claims and therefore Claim 47 is rejected under 35 U.S.C. §103(a).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

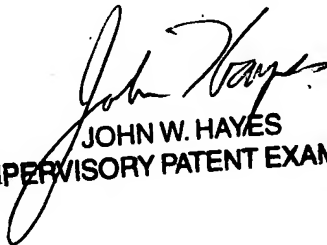
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